IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 9903 of 2007(S)

OA.269/2005 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN PO. CHENNAI - 600 003.

2. DIVISIONAL PERSONNEL OFFICER SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM - 695 014.

3. ASSISTANT DIVISIONAL ENGINEER, SOUTHERN RAILWAY, QUILON.

BY ADV. SRI.C.N.RADHAKRISHNAN

RESPONDENTS:
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1. A.KUNJU PILLAI, S/O.AZHAKAN, CHAKKALA KIZHAKKETHIL PUTHEN VEEDU, CHERIYANAD P.O., ALLEPPEY DISTRICT.

2. CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, KALOOR, KOCHI REPRESENTED BY ITS REGISTRAR.

BY GOVT.PLEADER SRI.P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO.9903 Of 2007 (S)

Dated this the 28th day of March, 2007

JUDGMENT

KOSHY,J.

Petitioners are challenging Ext.P3 order of the Central Administrative Tribunal passed in O.A.No.269/2005. The dispute is regarding the length of service of the applicant therein. He initially joined as a casual labourer in 1969 and he was afforded temporary status with effect from 21.3.1976. From that date onwards he was posted as a regular employee on a scale of pay of Rs.196-232. Later it was raised to Rs.200-250 and he was given retrospectively the above scale from 21.3.1976 onwards. While he was working as Gang man, he was given appointment as Substitute Gang man as per Annexure A4 and on 15.4.1985 he was empanelled and posted as temporary gang man with effect from 14.4.1984 and he retired on 30.4.2004. Question is whether he is entitled to get full pension for the period from 21.3.1976 to 30.4.2004. It is

the case of the department that he is entitled only 50% of the service for the period 21.3.1976 to 13.4.1984 as he was a casual labourer with temporary status during that period. Tribunal took the view that even though he was appointed in 1969 as casual employee he was given regular pay scale with effect from 21.3.1976. From that date he was not only given temporary status but he was working as substitute from that date, that is, from the date he was granted regular scale of pay. Therefore, for calculating pension, his service from 21.3.1976 should be calculated and accordingly his pension on service is 28 years. The findings that he was working as a substitute because he was given regular pay scale from 21.3.1976 is a finding of fact based on evidence. Tribunal also referred that in an earlier case in ***M.G.Remani Bai v. Union of India (1997 (36) ATC 603)***. Tribunal took similar view and that was accepted by the petitioner department. We are of the view that since the applicant before the tribunal and respondent herein was given regular pay scale from 21.3.1976 onwards and he was continuing service in regular pay scale without any break from 21.3.1976 till his superannuation, he is

entitled to pension calculating service from that date and no interference is required in the award in a petition filed under Article 227 of the Constitution of India. However, as requested we grant three months time for implementing of the above order. With the above observations this writ petition is disposed of.

J.B.KOSHY,JUDGE

T.R.RAMACHANDRAN NAIR, JUDGE

prp

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) No./2007

Judgment

Dated:21st March, 2007